



**MILPITAS CITY COUNCIL MEETING AGENDA  
AUGUST 16, 2005**

**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)  
455 E. CALAVERAS BOULEVARD**

**SUMMARY OF CONTENTS**

- I. ROLL CALL (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**  
  
**CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING**  
**(Pursuant to Government Code Section 54957.6)**  
**City Negotiators: Ed Kreisberg, Carmen Valdez**  
**Employee Organizations: Police Officers Association (MPOA), International Association of**  
**Firefighters (IAFF), Milpitas Professional and Technical Group (Protech)**  
**Under Negotiation: Wages, Hours, Benefits, Working Conditions**
- III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. APPROVAL OF MINUTES (August 2, 2005)**
- VI. SCHEDULE OF MEETINGS**
- VII. PRESENTATIONS (None)**
- VIII. CITIZENS FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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- IX. ANNOUNCEMENTS**
- X. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XI. APPROVAL OF AGENDA**
- XII. CONSENT CALENDAR (\*Items with Asterisks)**
- XIII. PUBLIC HEARING**

- 1. Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application To Create Two Parcels, Located At Corner Of Abel, Main And Great Mall Parkway And**

**Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD (Multi Family Very High Density With A Transit Oriented Overlay), Applicant: Fairfield Residential LLC (Staff Contact: Cindy Hom, 586-3284)**

**XIV. UNFINISHED BUSINESS**

- 2. Adopt a Resolution Establishing a Cost Recovery Program for the Preparation of the Transit Area Specific Plan (Staff Contact: Tambri Heyden, 586-3280)**
- 3. Authorize City Manager to Negotiate a Contract With Dyett And Bhatia, Urban And Regional Planners, To Conduct Phase II Of The Transit Area Specific Plan For The ±400-Acre Area Around The Light Rail And Future Montague/Capitol BART Stations (Staff Contact: Tambri Heyden, 586-3280)**

**XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

- RA1. Call to Order by the Mayor**
- RA2. Roll Call**
- RA3. Approval of Minutes (August 2, 2005)**
- RA4. Approval of Agenda**

**PUBLIC HEARING**

- RA5. Approve The Density Bonus, "S" Zone No. SZ2005-6 And Use Permit No. UP2005-13 For A Senior Housing Project At 163 North Main Street, Approve A Fair Use Report For The Disposition Of The Land, Authorize The Redevelopment Agency Executive Director To Enter Into A Disposition And Development Agreement And Related Documents With Mid-Peninsula Housing Coalition Addressing The Sale And Development Of The Devries/Dr. Smith House And Adjacent Property As An Affordable Senior Housing Project, And Authorize-The Making Of A Loan And Grant To Assist In The Development Of The Project (Staff Contact: Felix Reliford; 586-3071, Staci Pereira, 586-3278)**
- \*RA6. Adopt a Resolution of the Milpitas Redevelopment Agency Approving Execution of an Owner Participation Agreement With Shapell Industries Of Northern CA. (Staff Contact: Felix Reliford, 586-3071)**
- \*RA7. Adopt a Resolution of the Milpitas Redevelopment Agency Approving the Execution of an Owner Participation Agreement with Fairfield Development, LLC (Staff Contact: Felix Reliford, 586-3071)**
- \*RA8. Approve a Request For Proposal For Sale And Relocation Of The "Winsor Blacksmith Shop" Building At 116 N. Main Street (Staff Contact: Mark Rogge, 586-3403)**
- RA9. Agency Adjournment**

**XVI. REPORTS OF OFFICERS AND BOARDS**

## City Council

4. **Direct Staff to Report Back on Smoking Enforcement and Restrictions in Public Parks and Other Public Areas (Mayor Esteves, 586 3029)**
- \* 5. **Consider Funding \$1,000 For Milpitas Little League Senior All-Star Team (Mayor Esteves, 586-3029)**
- \* 6. **Request for Support for Assembly Bill 438 - Megan's Law Impacts on Housing Providers (Councilmember Giordano, 586-3032)**

## Facilities Naming Subcommittee

7. **Receive Report From the Facilities Naming Subcommittee (Staff Contact: Mark Rogge, 586-3403)**

## **XVII. NEW BUSINESS**

- \* 8. **Use of Asset Forfeiture Funds (Staff Contact: Charlotte Pang, 586-2432)**
- \* 9. **Approve Fourteen Cultural Arts Support Program Applications for the 2005-06 Funding Cycle (Staff Contact: Renee Lorentzen, 586-3286)**

## **XVIII. ORDINANCES**

10. **Waive First Reading Beyond the Title and Introduce Ordinance 239.4 Amending Title XI Chapter 16 Sections 16-2, 16-6, And 16-16 Of The Milpitas Municipal Code (Stormwater And Urban Runoff Pollution Control) (Staff Contact: Darryl Wong, 586-3345)**
- \* 11. **Waive Reading Beyond the Title and Adopt Ordinance No. 262.2, "An Ordinance of the City Council of the City of Milpitas Amending Section I-310-4.10 of the Milpitas Municipal Code" amending the Open Government ordinance (Staff Contact: Steve Mattas, 586-3040)**
- \* 12. **Waive Reading Beyond the Titles and Adopt Ordinance No. 238.2 Amending Title VIII, Chapter 5 (Water Efficient Landscapes) and Ordinance No. 240.1 Amending Title VIII, Chapter 6 (Water Conservation) of the City of Milpitas Municipal Code (Staff Contact: Dennis Carrington, 586-3275)**
- \* 13. **Waive Reading Beyond the Titles and Adopt Ordinance No. 120.43 and Ordinance No. 208.40 of Title VIII Chapters 1 And 2 Setting Utility Rates (Staff Contact: Darryl Wong, 586-3345)**

## **XIX. RESOLUTIONS**

- \* 14. **Adopt a Resolution Amending The Memorandum Of Understanding With Milpitas Employee Association (Staff Contact: Carmen Valdez, 586-3086)**
- \* 15. **Approve a Tow Rate Increase (Staff Contact: Steve Pangelinan, 586-2426)**
- \* 16. **Adopt a Resolution Granting Final Acceptance: Manor Pump Station Improvements, Projects No. 3385 and No. 3396 (Staff Contact: Mehdi Khaila, 586-3328)**

- \* 17. **Adopt a Resolution Amending Pre-Tax Payroll Deduction Plan For Service Credit Purchase Under Internal Revenue Code 414(h)(2) (Contribution Code 14) (Staff Contact: Dante D. Ong, 586-3132)**

## **XX. BIDS AND CONTRACTS**

- \* 18. **Approve Plans And Specifications And Authorize Advertisement For Bid Proposals: Sports Center Underwater Pool Lighting & Resurfacing Of Swimming Pools, Project No. 8163 (Staff Contact: Greg Armendariz, 586-3317)**
- \* 19. **Approve Consultant Services Agreement For Workers' Compensation Third Party Administrator Services (Staff Contact: Carmen Valdez, 586-3086)**
- \* 20. **Approve a Contract With Skyhawks Sports Programs for Summer 2005 Sports Camps (Staff Contact: Dale Flunoy, 586-3228)**
- \* 21. **Reject Bids and Authorize the Re-advertisement For Bid Proposals: Storm Water Pump Station Improvements, Project No. 8106 (Staff Contact: Doug DeVries, 586-3313)**
- \* 22. **Authorize The City Manager To Execute Agreement: Kennedy/Jenks Consultants, Venus Way Sewer Pump Station Improvements, Project No. 6101 (Staff Contact: Greg Armendariz, 586-3317)**
- \* 23. **Approve Agreement for Purchase of Real Property; Property Owner, Korean First Baptist Church of San Jose; Montague Expressway Widening (Project No. 4179) (Staff Contact: Greg Armendariz, 586-3317)**
- \* 24. **Award the Bid for Hydraulic Trailer (Staff Contact: Chris Schroeder, 586-3161)**
- \* 25. **Award the Bid for Sidewalk Repair, Curbs & Gutters. Project No. 4067 (Staff Contact: Chris Schroeder, 586-3161)**
- \* 26. **Award the Bid for Police Emergency Equipment Installation (Staff Contact: Chris Schroeder, 586-3161)**
- \* 27. **Award the Bid for Security Cameras and Digital Video Recording Equipment at the New Corporation Yard, Project 6079 (Staff Contact: Chris Schroeder, 586-3161)**

## **XXI. CLAIMS AND DEMANDS**

- \* 28. **Approve Payment of the CAL-ID Invoice to the City of San Jose in the Amount of \$55,748 (Staff Contact: David Rossetto, 586-2405)**
- \* 29. **Approve Payment to the Economic Driving School for Driver's Education Classes for FY2005-2006 (Staff Contact: Rosana Cacao, 586-3207)**
- \* 30. **Approve Payment to City of Fremont Tennis Center for Tennis Instruction FY2005-2006 (Staff Contact: Rosana Cacao, 586-3207)**
- \* 31. **Approve Payment Request to one Vendor (Staff Contact: Chris Schroeder, 586-3161)**

## **XXII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, SEPTEMBER 6, 2005 AT 7:00 P.M.**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE,

CONTACT THE OPEN GOVERNMENT COMMISSION

at the City Attorney's office at Milpitas City Hall  
455 E. Calaveras Boulevard, Milpitas, CA 95035

E-mail: [rpioroda@ci.milpitas.ca.gov](mailto:rpioroda@ci.milpitas.ca.gov)

Fax: 408-586-3030

Phone: 408-586-3040

*A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), select Open Government Ordinance under News Features.*

**BECOME A CITY COMMISSIONER!**

Currently, the City is accepting applications for the following commissions:

*Bicycle Transportation Advisory Commission*

*Economic Development Commission (representative for hotel industry)*

*Public Art Committee*

*Recycling and Source Reduction Advisory Commission*

*Youth Advisory Commission*

Applications are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or outside City Council Chambers.

Contact the City Clerk's Office (408-586-3002) for information.

## **AGENDA REPORTS**

### **XIII. PUBLIC HEARING**

- 1. Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application To Create Two Parcels, Located At Corner Of Abel, Main And Great Mall Parkway And Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD (Multi Family Very High Density With A Transit Oriented Overlay), Applicant: Fairfield Residential LLC (Staff Contact: Cindy Hom, 586-3284)**

**Background:** This item was continued from the June 7, June 21, and August 2, 2005 City Council meetings, at the request of the applicant.

At its May 11, 2005 meeting, the Planning Commission voted to recommend approval of the Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) to create two parcels totaling approximately 8 acres for the purpose of creating a 481 unit multi-family residential development subject to 34 special conditions. In addition, the Commission approved the associated Site and Architecture Review (SZ2004-9) and Use Permit No. UP2005-3 for deviations to setbacks, number of building levels and amount of open space per unit.

The site is zoned R4-TOD, Multi-Family Very High Density Residential with a Transit Oriented Overlay and is located on vacant land bordered by Main and Abel Streets and Great Mall Parkway. Nearby uses include the Great Mall, the Monte Vista residential development, and light rail.

Each parcel will contain one building and a parking structure. The buildings will surround the parking structure and additional parking is provided along the driveway at the southern end of the site. The west parcel will be approximately 5.2 acres and the east parcel will be approximately 3 acres. Access to the site is provided through two driveways off of Abel Street and one off of Main Street. In addition, the project will include a new trail area along the southern boundary of the property, adjacent to Penitencia Creek.

Traffic impact fees owed total \$180,291 dollars. A portion of this would be paid by the agency as part of a \$400,000 contribution towards the applicant's development impact fees and as provided for in the project's owner participation agreement with the Redevelopment Agency. The park and open space requirement is 2.19 acres; a value of \$1,314,786. If land and/or improvements for park purposes cannot be dedicated in close proximity to the project, this requirement shall be satisfied as an in-lieu fee. More detail is provided in the Planning Commission staff report included in the Council's agenda packet.

**Recommendation:**

1. Close the Public Hearing.
2. Approve the Fairfield Residential Vesting Major Tentative Tract Map (MA2005-4), based on the findings and special conditions contained in the Council's agenda packet, dated August 16, 2005.

## XV. UNFINISHED BUSINESS

### 2. Adopt a Resolution Establishing a Cost Recovery Program for the Preparation of the Transit Area Specific Plan (Staff Contact: Tambri Heyden, 586-3280)

**Background:** On July 5, 2005 the City Council considered an agenda item proposing to authorize the City Manager to negotiate a contract with the firm of Dyett & Bhatia to conduct Phase II of the Transit Area Specific Plan for the ±400-acre area around the Light Rail and future Montague/Capitol BART stations. The Council did not take action on the item and requested that when staff returned with the request that it be accompanied with a mechanism to recover the City's cost of preparing the Transit Area Specific Plan.

The resolution included in the Council's agenda materials proposes imposition of a new fee. Establishment of such a fee is allowed under California Government Code Section 65456 to recover costs associated with preparation of specific plans after the specific plans have been adopted. This new fee would be collected from any applicant wishing to file a building permit or planning permit application, either discretionary or non-discretionary, for property located within the Transit Area Specific Plan area. Thus, it would be in addition to Council-adopted fees already collected for development.

The resolution exempts certain kinds of approvals from paying the fee based on the premise that such approvals will not receive a benefit from location in the transit area and the associated specific plan improvements and changes to properties in the project area. To implement the fee, City staff would keep a record of such payment so that no parcel is charged the fee more than once over the course of time. This system is proposed since the amount of the fee has been set to spread the specific plan preparation cost over all developable parcels in the area on a cost per square foot of land basis so the fee reflects a proportionate share of the cost.

#### Cost Recovery

The costs to be recovered consist of the following:

Phase I Dyett & Bhatia costs	\$ 108,000
Phase I staff costs	\$ 124,248
Phase II Dyett & Bhatia costs	\$ 522,635*
Phase II staff costs	<u>\$ 575,814</u>
	\$1,330,697

\*This amount reflects the \$672,635 Dyett & Bhatia costs less the \$150,000 VTA Community Design and Transportation Grant.

The net developable area within the Transit Area Plan is 15,883,113.84 square feet. This figure reflects the square footage of parcels shown on record maps. The cost per square foot for the Transit Area Plan would be \$1,330,697 divided by 15,883,113.84 or 8.38cents per square foot. This total cost for Phase I and II will include removal of this area from the Midtown Specific Plan, creation of a Transit Area Specific Plan, amendment of the General Plan, Zoning Ordinance changes in land use, in land use and zoning for numerous parcels within the project area, design guidelines, to ensure higher quality development than exists in the area, preliminary streetscape and gateway plans for future public improvements and the required EIR. These project deliverables will benefit property owners in the area due to greater development return on investment resulting from higher densities and intensities than currently are permitted and future public amenities.

**Recommendation:** Adopt a Resolution establishing a cost recovery fee program for the preparation of the Transit Area Specific Plan.



3. **Authorize The City Manager To Negotiate A Contract With Dyett And Bhatia, Urban And Regional Planners, To Conduct Phase II Of The Transit Area Specific Plan For The ±400-Acre Area Around The Light Rail And Future Montague/Capitol BART Stations (Staff Contact: Tambri Heyden, 586-3280)**

**Background:** On July 5, 2005 the City Council considered this agenda item proposing to authorize the City Manager to negotiate a contract with the firm of Dyett & Bhatia, to conduct Phase II of the Specific Plan / Transit Area Plan for the ±400-acre area around the light rail and future Montague/Capitol BART stations. The Council did not take action on the item and requested that when staff returned with the request it be accompanied by a mechanism to recover the city's costs of the project, as well as additional discussion of why only one consultant was interviewed for the task of preparing Phase II of the Transit Area Plan. The attached background memorandum addresses this issue. The mechanism to recover costs of the preparation of Phase II of the Transit Area Plan is a separate item on the August 16, 2005 agenda under Resolutions.

Included in the Council's materials is a draft consultant contract with Dyett & Bhatia including a scope of work, schedule, and budget for this 14-month project.

The Scope of Work is as follows:

**Task 1.0: Analysis of Environmental Impacts and Development Issues.** This task would include a preliminary traffic analysis, an analysis of sewer treatment capacity, an analysis of market absorption and demand in order to minimize fiscal impacts to the City, existing conditions analysis of land use, transportation, utilities and hydrology, hazardous materials, soils and seismic hazards. Development issues would be researched and potential solutions would be provided for infrastructure and other items necessary for development to proceed, including the BART Station design. An outreach program would be conducted with property owners and stakeholders about the Specific Plan process and the project setting section of the EIR would be prepared as part of this task.

**Task 2.0: Preferred Concept Plan and Public Review.** The Phase I Concept Plan would be revised based on the preliminary impact analysis, and further research about development issues and a Preferred Concept Plan would be conducted. This task would include a bus tour for stakeholders, the Planning Commission, City Council and staff to visit neighborhoods and districts in nearby cities that are comparable to those proposed for Milpitas. The revision of the Concept Plan would involve test site plans for the Boulevard Commercial and Mixed Use areas to refine the density recommendations, a fiscal impact analysis, an analysis of the pros and cons of potential revisions as well as consultations with public agencies and staff. The Notice of Preparation for the EIR will be prepared and a stakeholders workshop will be held. The Revised Concept Plan would be presented to the Planning Commission and the City Council for feedback and direction.

**Task 3.0: Draft Specific Plan and EIR Analysis.** The consultant would prepare all the substantive components of the first four chapters of the Specific Plan, review them with City staff and compile an Administrative Draft Specific Plan. An EIR analysis would be conducted for Land Use, Circulation, and Community Design. Specific Plan proposals would be prepared and reviewed with City staff. A Stakeholders Workshop would be held and an Administrative Draft Specific Plan (first four chapters) would be prepared.

**Task 4.0: Draft EIR.** An Administrative Draft EIR would be compiled including all impacts and mitigations sections, as well as other required sections discussing alternatives and cumulative impacts. Meetings would be held with City staff to review and discuss proposed mitigations for



major impacts including transportation, sewage treatment and flooding. Work would begin on the Draft EIR.

**Task 5.0: Implementation Program and Completion of Draft Specific Plan and Draft EIR.**

An overall implementation strategy and phasing plan would be prepared under this task and a summary description of all infrastructure improvements required for development of the area. Cost estimates and financing mechanisms will be prepared for the area wide infrastructure resulting in recommendations for financing mechanisms for the provision of services and construction of infrastructure. The Specific Plan would be drafted and presented to the Planning Commission and the City Council for feedback and direction. A Draft EIR would be completed.

**Task 6.0: Zoning and General Plan Amendment.** The existing zoning code, Midtown Specific Plan and General Plan would be analyzed and recommendations would be made for any necessary revisions to those documents. Administrative Drafts and maps would be prepared for amendments to the zoning code, the Midtown Specific Plan and the General Plan. A Stakeholder meeting would be held to present the main provisions of the draft documents to the stakeholders, invite comments and answer questions.

**Task 7.0: Public Review of Draft Specific Plan and Draft EIR.** The public would be able to review these documents during a 45-day public review of the EIR. A public hearing would be held during this period to receive public comments on the Draft EIR and final comments on the Draft Specific Plan. A public hearing will be held before the Planning Commission on the Draft Specific Plan, Draft EIR, General Plan and Zoning Ordinance changes.

**Task 8.0: Final EIR and Adoption of Specific Plan, EIR, Zoning and General Plan Amendment.** An Administrative Draft Final EIR would be prepared including responses to comments on the Draft EIR that would lead to publishing the final EIR. A final Specific Plan would be prepared in response to editorial comments from staff. The Final EIR and Final Specific Plan would be presented to the City Council.

The Scope of Work as proposed would fully utilize the \$325,000 budget authorized for this project by the City Council as part of the Department's FY 05-06 budget approval, as well as the \$150,000 grant received from VTA. However, there are certain deliverables and agency coordination tasks that are extremely beneficial that were not included. These include: Five additional Technical Working Group meetings to meet on a regular basis with BART and City staff over the course of the project to resolve many critical issues, including the design of the BART station, BART line and related facilities, the Milpitas Boulevard extension, railroad lines, etc. Cost: \$5400.

Analysis of Milpitas transportation impacts on San Jose transportation facilities. Cost: \$3000. Preparation of conceptual streetscape designs for all streetscape improvements. Freedman, Tung & Bottomly would prepare streetscape plans for all major streetscapes in the planning area. These plans would enable developers to have streetscape design standards to follow, thus enabling them to develop soon after plan adoption, rather than having to wait for the City to have plans prepared or do them on their own. Cost: \$92,273.

Dyett & Bhatia coordination and oversight of Streetscape Design Program. Cost: \$9,227 (10%). Contingency. Given the many complex issues related to the development of the Milpitas Transit Area Plan, there is almost certainly going to be a need for additional services beyond those specified in the Scope of Work during the course of the project as more is learned about the issues involved. Additional funds could be required for additional data collection, additional analysis required for the EIR, additional work related to the future BART station, additional need to consider alternatives if directed by staff or the City Council, etc. These funds could only be used with the express authorization of City staff after a written request by Dyett & Bhatia, based on a specific proposal for additional services. Cost: 15% (\$87,735).

These above additional tasks total \$197,635. These additional tasks are strongly recommended to effectively deliver an EIR that is less apt to be challenged and plan details that once completed will allow developers in the area to move forward with their proposals without delay and at a price that is more cost effective than if each developer had to hire their own consultants to do the work under this contract.

**Recommendation:** Authorize the City Manager to negotiate a contract with Dyett and Bhatia, Urban and Regional Planners, to conduct Phase II of the Transit Area Plan as outlined in this report and the attached Scope of Work for the ±400 acre area around the light rail and future Montague / Capitol BART stations, in an amount not-to-exceed a) \$672,635 or, b) \$475,000 (the original budgeted amount), subject to approval as to form by the City Attorney.

If option a) is chosen, approve the budget appropriation for \$197,635 from the Redevelopment Agency fund for additional costs detailed above.

## **XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

**RA1. Call to Order by the Mayor**

**RA2. Roll Call**

**RA3. Approval of Minutes (August 2, 2005)**

**RA4. Approval of Agenda**

### **PUBLIC HEARING**

**RA5. Approve The Density Bonus, “S” Zone No. SZ2005-6 And Use Permit No. UP2005-13 For A Senior Housing Project At 163 North Main Street, Approve A Fair Use Report For The Disposition Of The Land, Authorize The Redevelopment Agency Executive Director To Enter Into A Disposition And Development Agreement And Related Documents With Mid-Peninsula Housing Coalition Addressing The Sale And Development Of The Devries/Dr. Smith House And Adjacent Property As An Affordable Senior Housing Project, And Authorize-The Making Of A Loan And Grant To Assist In The Development Of The Project (Staff Contact: Felix Reliford; 586-3071, Staci Pereira, 586-3278)**

**Background:** Mid-Peninsula Housing Coalition proposes to construct a senior housing development of 103 residential units (1 manager and 102 affordable senior units) within a new 4-story residential building and in the existing DeVries House, which will be rehabilitated and relocated to the southeast corner of the property at 163 North Main Street. The project is contingent upon the applicant purchasing the DeVries property and a portion of the property immediately south from the Milpitas Redevelopment Agency. Approval of a Fair Reuse Report, approval of a Disposition and Development Agreement (DDA) and related documents for the transfer of the property and the development of the senior housing project, and approval of the making of a loan and grant to assist the development of the project is part of this request.

Design of the development includes deviations from the MXD-TOD (Mixed Use Transit-Oriented Development Overlay District) setback, drive aisle width and parking regulations, as will require approval of the 88% density bonus the applicant seeks. The requested density will exceed the maximum density (40 du/acre) allowed under the Mixed Use land use with TOD overlay for a density bonus of 75 du/acre. The applicant intends to meet the city (Section 54.20 of the Zoning Ordinance) and state density bonus regulations by designating all of the units for seniors (except the manager’s unit) thus qualifying, the project for a density bonus. Since this project satisfies the requirements under the state density previous bonus law, the City must grant

a minimum density bonus of 25% and at least one concession or incentive or provide other incentives of equivalent financial value based on the land cost per dwelling. The following deviations from the MXD-TOD Development Standards are presented as concessions:

1. Reduction in minimum front building setback on North Main Street from 8 to 6 feet.
2. Reduction in drive aisle width to 24-feet.

Compliance with CEQA has been satisfied by Environmental Impact Report (EIR), State Clearinghouse No. 2004082131, which was adopted and certified by the City Council on January 4, 2005 and the Redevelopment Plan Amendment EIR on June 2, 2003. The North Main Street Development Project area contains several projects including the County medical clinic, new City library, two public parking garages and the senior housing development. The EIR provided mitigation measures for transportation and traffic, air quality, noise, hydrology and water quality, hazardous materials, cultural and paleontological resources and aesthetics. Of these mitigation measures, the majority are applicable to this project and have been included as conditions of approval, with the exception of cultural resource impacts to the other historical buildings within the project area.

#### Entitlement Approval Required by the City Council (“S” Zone, Use Permit and Density Bonus)

The “S” Zone and Use Permit applications normally approved by the Planning Commission are subject to the City Council review as part of the Council’s review of the density bonus request. The Planning Commission reviewed the requests at their meeting on July 27, 2005 and recommended approval of the applications. At this meeting, staff recommended modifications to several conditions, which have been included in the Recommended Findings and Conditions of Approval in the Council’s agenda packet.

Because this development involves a cultural resource (DeVries House), the PRCRC reviewed the project at their August 1, 2005 meetings and recommended approval to the City Council. Also, on August 1, 2005, the Facilities Naming Subcommittee recommended to the City Council the name of “DeVries Place” as the official name of the Senior Housing Project.

#### **Redevelopment Agency Approval Required (Fair Reuse Report and Disposition and Development Agreement-DDA)**

On May 18, 2004, the City Council/ Redevelopment Agency authorized a period of exclusive negotiation with Mid-Peninsula Housing Coalition for the purpose of developing a minimum 98-unit senior affordable housing project at 163 North Main Street. The Agency staff and Mid-Peninsula Housing Coalition have negotiated the terms of a Disposition and Development Agreement (DDA) to be executed by MP Milpitas Affordable Housing Associates, a limited partnership which is a wholly controlled subsidiary of Mid-Peninsula Housing Coalition is the general partner. A copy of the DDA is included in the Council/Agency agenda packet.

In brief, the DDA agreement provides for the following elements:

- The development of a 103-unit senior housing project with long-term affordability to extremely low and very low income seniors.
- The acquisition of the 1.37 acre site and the DeVries/Dr. Smith House (which will include 3 senior units on the 2<sup>nd</sup> floor)
- The permanent elimination of the partially vacant parcel of land on the site to be used for affordable housing for seniors.
- The construction of \$3.9 million of street and infrastructure improvements to be compatible with the surrounding developments (Library, County and Health Facility) and the requirements of the Midtown Specific Plan.
- Maintaining a Historic Façade and Access Easement to the façade of the DeVries/ Dr. Smith House to maintain the historical integrity of the structure.

- A Grant Deed transferring the land and the DeVries/Dr. Smith House to the partnership.
- A Loan and Grant Agreement describing the terms and conditions of the Agency's financial assistance, a Promissory Note evidencing the developer's obligation to repay the loan on a residual receipts basis, and a Deed of Trust providing the Agency with security interest in the Project to secure repayment of the Loan.
- Regulatory Agreement to maintain long-term affordability of the project.
- Commitment of \$15.6 million in Redevelopment Agency Funds (\$9.6 million RDA, \$5 million KB Homes and \$1 million from County of Santa Clara) towards the development of the project. These sources of funds will fund Agency assistance in the form of a \$1 million grant and a \$14.6 million deferred payment loan. Up to \$1.2 million of the funds may be used for predevelopment expenses (e.g. development of plans, and specifications) prior to conveyance of the land. The developer will be contributing \$14+million towards the project.
- Reciprocal Easement Agreement with County of Santa Clara addressing the construction, maintenance and use of a shared driveway with the adjacent Healthcare Facility.
- Pursuant to California Community Redevelopment Law, a redevelopment agency may sell property without public bidding after a public hearing, notice of which is published for not less than once per week for two weeks. This noticing has been accomplished. Additionally, the Redevelopment Agency must hold a hearing on the "Fair Reuse Report" prior to considering the property's disposition. The Fair Reuse Report must include the cost of the agreement to the Agency, including the Agency's acquisition costs, costs of improvements to be provided by the Agency, and expected interest to be paid on loans or bonds, the value of the interest to be conveyed, the sales price to be paid, an explanation of any difference between the sale price and fair market highest and best use value, and an explanation of how the sale will assist the elimination of blight. In order to prepare the Fair Reuse Report the Agency retained the services of the expert firm of Keyser Marston who will be present at the hearing. A copy of the Fair Reuse Report is included in the Council's/Agency's materials.

The instrument to effectuate the sale and development of the property, the Disposition and Development Agreement (DDA), is included in the agenda materials. It contains the financial negotiated between the Agency and developer as well as the terms and conditions related to development of the Project.

The DDA provides that the property is expected to close escrow on July 31, 2006. The developer will start construction shortly afterward with an anticipated completion date of January 2008.

The DDA provides that the developer will pay an in-lieu fee of \$3.9 million towards a pro rata share of the North Main Street Improvements including construction and installation of: sidewalks, street trees, landscaping, street lights, Main Street utilities as well as undergrounding of the existing overhead utilities (and acquisition of easements to maintain existing utility services), utility connection fees, traffic signals, median swales and street improvements along North Main Street.

The Agency's financial assistance will consist of the following:  
 \$1 million grant  
 \$5 million-0% deferred interest, residual receipts  
 \$9.6 million-3% deferred interest, residual receipts

The financial terms of the Agency's assistance are structured in this matter to allow the developer to maximize the use of low-income housing tax credits that they anticipate using to finance the project.

Included in the Council and Agency agenda packet are the background information and documents pertaining to this item.

**Recommendation:**

1. Open the joint public hearing.
2. Hear Testimony.
3. Close the public hearing.
4. City Council approves the “S” Zone No. SZ2005-6, Use Permit No. 2005-13 and the requested Density Bonus.
5. City Council adopts a Resolution approving the fair reuse report and the conveyance of the property.
6. Redevelopment Agency adopts a Resolution approving the fair reuse report, adopting findings in connection therewith, approving the Disposition and Development Agreement and related documents and approving the loan and grant.
7. Approve the name of “DeVries Place” as the official name of the Senior Housing Project as recommended by the Facility Naming Committee.

**\*RA6. Adopt Resolution of the Milpitas Redevelopment Agency Approving The Execution Of An Owner Participation Agreement With Shapell Industries Of Northern CA. (Staff Contact: Felix Reliford, 586-3071)**

**Background:** On February 3, 2004, the Redevelopment Agency authorized staff to enter into negotiations with Shapell Industries of Northern California for the development of a 65-unit townhome development and 54,000 square foot Safeway Supermarket at the Town Center. The Redevelopment Agency assistance was authorized specifically for the development of 20 deed-restricted affordable housing units (16 moderate and 4 very low income). Financial assistance for the four very low-income units will consist of the rehabilitation of rental units off-site with deed restrictions. In return for the Agency’s financial assistance with the four off-site units, the developer will fund and/or construct on and off-site improvements benefiting the public valued at \$392,000.

The OPA (Owner Participation Agreement) sets out in detail the responsibilities of the Agency and the developer, specifically with regards to the timing, benefits, dispute resolution and anti-discrimination requirements. The final OPA is now ready for Agency approval.

In summary, the OPA commits a total of \$1 million dollars in affordable housing funds for the development of 16 moderate-income units and 4 very low-income units. Funds are pledged in the form of silent second loans (\$50,000 per unit-for a total of \$800,000). Staff estimates a cost of approximately \$200,000 for the rehabilitation of the off-site units (\$50,000/per unit). The possibility exists that the Agency will be able to rehabilitate more than 4 units, depending on the cost and the extent of the improvements. It is estimated that the proposed project, upon full build-out, will return \$71,507 annually in tax increment. Sufficient low and moderate housing funds are available.

At its meeting on March 24, 2004, the Planning Commission reviewed the proposed project and recommended approval of the OPA to the City Council. A copy of the OPA and the resolution for adoption are included in the Council’s agenda packet. The participant has signed the OPA indicating acceptance.

**Recommendation:** Adopt a Resolution of the Redevelopment Agency approving the execution of an Owner Participation Agreement with Shapell Industries of Northern California LLC and making the certain findings.

**\*RA7. Adopt Resolution of the Milpitas Redevelopment Agency Approving the Execution of an Owner Participation Agreement with Fairfield Development, LLC (Staff Contact: Felix Reliford, 586-3071)**



**Background:** On March 15, 2005, the Redevelopment Agency authorized staff to enter into negotiations with Fairfield Development, LLC for the development of a 481-unit residential apartment project, located on Great Mall Parkway between S. Abel Street and S. Main Street (the Donovan property). The Redevelopment Agency assistance was authorized specifically for the development of 96 deed-restricted affordable housing units (24 very low and 72 moderate income). Prior to the Planning Commission meeting, Fairfield Development revised their plans to reflect a total of 100 affordable housing units (24 very low, 4 low and 68 moderate income) to be provided instead of 96 affordable units. The developer revised their plans to incorporate more 3-bedroom units in their project at staff 's request to help to address some overcrowding housing conditions that have been identified in the city.

The OPA (Owner Participation Agreement) sets out in detail the responsibilities of the Agency and the developer, specifically with regards to the timing, benefits, dispute resolution, and anti-discrimination requirements. The final OPA is now ready for Agency approval.

The OPA commits a total of \$1,240,000 in affordable housing funds for the development of 24 very low, 4 low, and 68 moderate-income units. Funds are pledged in the form of a \$400,000 grant and \$840,000 silent second down payment assistance loan for the 24 very low income units. This \$400,000 will be used towards payment of permits and fees related to the affordable housing units. Sufficient low and moderate housing funds are available.

At its meeting on May 11, 2005, the Planning Commission reviewed the proposed project and recommended approval of the OPA to the City Council. A copy of the OPA and the resolution for adoption are included in the Council's agenda packet. The participant has signed the OPA indicating acceptance.

**Recommendation:** Adopt a Resolution of the Redevelopment Agency approving the execution of an Owner Participation Agreement with Fairfield Development, LLC and making the findings contained within the resolution.

**\*RA8. Approve A Request For Proposal For Sale And Relocation Of The “Winsor Blacksmith Shop” Building At 116 N. Main Street (Staff Contact: Mark Rogge, 586-3403)**

**Background:** On August 2, 2005 the City's Redevelopment Agency acquired real property, consisting of two parcels (Assessor's Parcel Numbers 282-40-026 and 282-40-020) at 116 North Main Street, for the construction of the City's new Library and Midtown East Parking Garage. All structures on the newly acquired property must be removed and the site cleared for construction. The property contains the former “Winsor Blacksmith Shop” building built in 1926.

The Environmental Impact Report for the North Main Street Development project found that the Winsor Blacksmith Shop meets the definition of a historical resource under the California Environmental Quality Act (CEQA), and included several mitigation measures:

- After property acquisition the City shall offer the Winsor Blacksmith Shop for purchase to be removed from the property at buyer's expense and transferred to a new lot within Milpitas. Title to the building shall be transferred subject to a covenant that requires preservation of the building's historic features.
- If no bids are received or if building relocation is not feasible, the City will produce a full set of Historic American Building Survey (HABS)-style photo documentation, a history of the Winsor Blacksmith Shop, and a brochure; and salvage architectural elements and boards with brands from the building and incorporate them into a display.

A Request for Proposals (RFP) was prepared by staff, which offers the building for sale and removal in accordance with the above requirements. The RFP also establishes other standard City requirements for risk management and safety as well as a time schedule. The schedule is

important since there is a considerable amount of site preparation work, including hazardous material abatement that must occur before construction of the parking garage can begin.

Milestone dates within the schedule are as follows:

August 17, 2005	Advertise the RFP and publish it on the City's website
September 7, 2005	Last day to submit proposals
September 12, 2005	Presentation to Park, Recreation, and Cultural Resources Commission of results of the RFP process
September 20, 2005	City Council consideration
October 4, 2005	Last day to execute Contract and obtain building permits
October 28, 2005	Building relocation to be complete.
November 1, 2005	Demolition of slab & haz-mat evaluation of ground

At the August 1 meeting, the Parks, Recreation, and Cultural Resource Commission recommended approval of an RFP to sell and remove the "Winsor Blacksmith Shop." A copy of the final RFP will be sent to the PRCRC and the Milpitas Historical Society.

In compliance with City procedures to dispose of City property the City Council should make a finding that the buildings and material on the newly acquired City property is surplus and suitable for disposal.

**Recommendation:**

1. Declare the buildings and personal (chattel) property at 116 N. Main Street are surplus and suitable for disposal in accordance with City policy.
2. Approve the Request for Proposals (RFP) to offer the "Winsor Blacksmith Shop" for sale and removal, and authorize staff to advertise the RFP.

**RA9. Agency Adjournment**

**XVI. REPORTS OF OFFICERS AND BOARDS**

**City Council**

**4. Direct Staff to Report Back on Smoking Enforcement and Restrictions in Public Parks and Other Public Areas (Mayor Esteves, 586-3029)**

**Background:** State law prohibits smoking in restaurants, bars and work-places. City ordinance prohibits smoking within 25 feet of the entrance to any City-owned or leased buildings. Some California communities are extending smoking restrictions to beaches, public parks and other public spaces.

**Recommendation:** Direct staff to report back on smoking enforcement activities and restrictions on smoking in public parks and other public areas, including the preparation of a draft ordinance.

**\* 5. Consider Funding \$1,000 For Milpitas Little League Senior All-Star Team (Mayor Esteves, 586-3029)**

**Background:** At the time of agenda preparation, Milpitas Little League's Senior All-Star Team was competing in the 2005 Western Region Senior Little League Baseball Tournament in Beaverton, Oregon. The Team is in need of funding to cover costs associated with their participation in the western region tournament. Funding is available in the City Council's Community Promotions Unallocated budget.

**Recommendation:** Approve providing \$1,000 funding to the Milpitas Little League's 2005 Senior All-Star Team.



\* **6. Request for Support for Assembly Bill 438 - Megan's Law Impacts on Housing Providers (Councilmember Giordano, 586-3032)**

**Background:** Councilmember Giordano requests City Council support for AB438 sponsored by Assemblymember Nicola Parra. It focuses on several improvements to the current Megan's Law, notably that rental housing providers must inform tenants through the rental lease of where to find information online regarding sex offenders.

**Recommendation:** Adopt a Resolution of Support for AB 438.

**Facilities Naming Subcommittee**

**7. Receive Report From the Facilities Naming Subcommittee (Staff Contact: Mark Rogge, 586-3403)**

**Background:** The Facilities Naming Subcommittee met on August 1<sup>st</sup> to discuss several items referred to the Subcommittee by the City Council. The agenda included review of the name for the new Library, the name for the new Senior Housing Project and ways of honoring the following people: Dr. Martin Luther King, Jr., Cesar Chavez, former City Councilmember Barbara Lee, and former Sunnyhills Neighborhood president Neil McKenzie.

A summary memorandum and the draft (unapproved) minutes of the Facilities Naming Subcommittee meeting of August 1, 2005, are included in the Council packet.

**Recommendations:**

1. Note, receive, and file the report from the Facilities Naming Subcommittee.
2. Consider recommendations from the Facilities Naming Subcommittee.

**XVII. NEW BUSINESS**

\* **8. Use of Asset Forfeiture Funds (Staff Contact: Charlotte Pang, 586-2432)**

**Background:** One of our canines "Kilo" recently encountered medical problems associated with age. This dedicated canine served the Milpitas community for four years and has been retired. The replacement of this canine could not be anticipated in the FY 2005-06 budget.

The cost of a new canine and initial training and equipment is \$8,500. There are sufficient funds in the asset forfeiture funds to finance the acquisition of the canine.

**Recommendation:** Approve the use of Asset Forfeiture funds to purchase a new canine.

\* **9. Approve Fourteen Cultural Arts Support Program Applications For The 2005-06 Funding Cycle (Staff Contact: Renee Lorentzen, 586-3286)**

**Background:** The Cultural Arts Support Program (CASP) is a competitive grant program designed to increase and deepen participation in arts and cultural activities for the Milpitas community. CASP also encourages coalitions and collaborations between artists, art organizations and other sectors to infuse the entire community with art activities.

Fifteen (15) applicants submitted Cultural Arts Support Program (CASP) grant applications by the June 17, 2005, deadline for the 2005-06 funding cycle. The Arts Commission CASP Subcommittee reviewed the applications at a July 12, 2005, meeting and recommended thirteen (13) applicants to receive grant specified In-Kind Services and monetary amounts, up to \$2,000,

should funding become available per the Finance Subcommittee's findings. The CASP Subcommittee presented its recommendation to the Arts Commission at their July 25, 2005, meeting. The Arts Commission discussed the CASP Subcommittee recommendations at length and recommended that fourteen (14) applicants be forwarded to the City Council for approval. Attached in the Council's agenda packet is the list of applicants, their recommended amount of funding and use of in-kind services, and the Un-approved Minutes from the CASP Subcommittee's July 12, 2005, meeting and the Arts Commission's July 25, 2005, meeting.

**Recommendation:** Approve the Arts Commission's recommendations for the Cultural Arts Support Program grants for FY 2005-2006.

## **XVIII. ORDINANCES**

### **10. Waive First Reading Beyond the Title and Introduce Ordinance 239.4 Amending Title XI Chapter 16 Sections 16-2, 16-6, And 16-16 Of The Milpitas Municipal Code (Stormwater And Urban Runoff Pollution Control) (Staff Contact: Darryl Wong, 586-3345)**

**Background:** This item is a staff recommendation to update Chapter 16 of Title XI on urban runoff and stormwater pollution control. A revision is necessary to comply with new Regional Water Quality Control Board permit requirements that specifies additional stormwater control measures be incorporated into new and redeveloped private and public projects. Key changes to the ordinance include:

- Revisions to Definitions (Section XI-16-2)
- Addition of permanent stormwater pollution prevention measures required (Section XI-16-6)
- Addition of Hydromodification Management Plan requirements (Section XI-16-6).
- Clarification for application of connection fees (Section XI-16-16).

Staff recommends the introduction of the ordinance.

**Recommendation:**

1. Waive the reading beyond the title.
2. Introduce Ordinance 239.4 amending Chapter 16 of Title XI Sections 16-2, 16-6, and 16-16 of the Milpitas Municipal Code regarding stormwater and urban runoff pollution control, subject to approval as to form by the City Manager.

### **\* 11. Waive Reading Beyond the Title and Adopt Ordinance No. 262.2, "An Ordinance of the City Council of the City of Milpitas amending Section I-310-4.10 of the Milpitas Municipal Code" amending the Open Government ordinance (Staff Contact: Steve Mattas, 586-3040)**

**Background:** The proposed ordinance presented by Vice-Mayor Gomez would establish the formation of a City Council subcommittee that would assume all of the powers and duties of the Open Government Commission. Ordinance 262.2 was introduced at the August 2, 2005 City Council meeting. At the August 2, 2005 Council meeting, the Council approved a motion to amend the ordinance that was proposed as follows: The City Council subcommittee would exist from the effective date of Ordinance 262.2 until December 31, 2006. Therefore, the amendment to Milpitas Municipal Code Section I-310-4.10(a) is as follows:

"The City Council shall establish a City Council subcommittee which shall assume all of the duties and powers of the Open Government Commission. This City Council subcommittee shall exist until December 31, 2006."

**Recommendation:**

1. Motion to waive reading beyond the title for Ordinance No. 262.2.

2. Motion to approve Ordinance No. 262.2, an ordinance of the City Council of the City of Milpitas amending Section I-310-4.10 of the Milpitas Municipal Code.
3. Direct staff to publish Ordinance No. 262.2 in compliance with CA Government Code.

**\* 12. Waive Reading Beyond the Titles and Adopt Ordinance No. 238.2 Amending Title VIII, Chapter 5 (Water Efficient Landscapes) and Ordinance No. 240.1 Amending Title VIII, Chapter 6 (Water Conservation) of the City of Milpitas Municipal Code (Staff Contact: Dennis Carrington, 586-3275)**

**Background:** On August 2, 2005, the City Council waived reading beyond the title and introduced Ordinance No. 240.1 (Water Conservation Ordinance), and Ordinance No. 238.2 (Water Efficient Landscape Ordinance).

The City's water efficient landscape ordinance was adopted in 1993 in accordance with AB 325, and addresses requirements to minimize use of water for landscape irrigation. AB 325 also requires use of recycled water for landscape use if feasible and cost effective. The city's water conservation ordinance was adopted in 1994. The ordinance was adopted in part to reduce the City's reliance on potable (drinkable) water, and to promote conservation and efficient use of water. In addition, since the San Jose/Santa Clara Water Treatment Plant (WPCP) had recycled water available for use this ordinance would increase use of recycled water throughout the City and help meet flow discharge limitations from the WPCP by diverting to the recycled water system.

Since that time, the City has developed the Abel and Main Street Streetscape Plans that identify landscaping that requires certain species to create a streetscape consistent with the Midtown Plan and the City's Streetscape Master Plan. Because the proposed Abel and Main Street landscape species are the only species, which can feasibly be planted in conformance with the City's design requirements, and because they require water of lower salt content than that provided by the recycled water, an exception to the recycled water use provision is needed.

Therefore, the Engineering and Planning Divisions recommend modifications to the Municipal Code's Water Efficient Landscape Ordinance No. 238.2 (Title VIII, Chapter 5, Section 3.03) and Water Conservation Ordinance 240.1 (Title VII, Chapter 6, Section 3.00). The proposed modifications are included in the Council's agenda packet. In addition, the proposed water conservation ordinance amendment 240.1 addresses other housekeeping changes, including proper referencing to the Table of Contents.

**Recommendation:**

1. Waive reading beyond the title and adopt Ordinance No. 240.1.
2. Waive reading beyond the title and adopt Ordinance No. 238.2.

**\* 13. Waive Reading Beyond the Titles and Adopt Ordinance No. 120.43 and Ordinance No. 208.40 Of Title VIII Chapters 1 And 2 Setting Utility Rates (Staff Contact: Darryl Wong, 586-3345)**

**Background:** On August 2, 2005, amendments to ordinances Nos. 120.43 and 208.40 were introduced to the Council. The amendments adjust water, recycled water and sewer rates.

**Recommendation:**

1. Waive full reading of the ordinances.
2. Adopt Ordinance 120.43 amending sections 6.13, 6.14, 6.15 and 6.16 of Chapter 1, Title VIII, of the Milpitas Municipal Code setting water rates.
3. Adopt Ordinance 208.40 amending section 6.01 of Chapter 2, Title VIII, of the Milpitas Municipal Code setting sewer rates.

## **XIX. RESOLUTIONS**

### **\* 14. Adopt a Resolution Amending The Memorandum Of Understanding With Milpitas Employee Association (Staff Contact: Carmen Valdez, 586-3086)**

**Background:** The City of Milpitas (City) and Milpitas Employee Association (MEA) entered into a Memorandum of Understanding (MOU) with an effective date of January 1, 2003 through December 31, 2005. The language in the MOU provides that that City will increase the base salary for employees in MEA by 2.25% effective the first full pay period in July 2005. The MOU also provides that the City shall make a total contribution to the LIUNA Pension fund equal to \$0.13 per hour, per employee covered by the MOU, up to forty (40) hours per week.

City staff and representatives of MEA have met and conferred in good faith regarding the City's contribution to the LIUNA Pension Fund described in Section 42.01 of the MOU, the scheduled wage increase described in Appendix A of the MOU and the possibility of an extension of the current MOU. The outcome of the meet and confer process included the following proposals:

- In lieu of the 2.25% base salary increase the City will contribute an additional \$0.58 per hour per week up to a maximum of 40 hours per week to the LIUNA Pension Fund for all MEA represented employees that are on paid status.
- Beginning the first full pay period in July 2005, MEA represented employees will only receive a 0.5% increase in their base salary.
- The current MOU will be extended for one (1) calendar year from January 1, 2006 through December 31, 2006.
- If the City approves an increase to the base salaries for any bargaining unit in the City, MEA represented employees will receive the same increase effective on the date agreed to by City Council or January 1, 2006, whichever date is later.

A copy of the recommended Side Letter and Exhibit "A" is included in the City Council Agenda Packet.

**Recommendation:** Adopt a Resolution to amend the current Memorandum of Understanding between the City of Milpitas and the Milpitas Employee Association to reflect the changes defined in the Side Letter dated July 29, 2005 and extend the MOU through December 31, 2006.

\* 15. **Approve Tow Rate Increase (Staff Contact: Steve Pangelinan, 586-2426)**

**Background:** Resolution No. 6229 (section 15) allows for rate schedules to be consistent with other tow services in the County and for an annual adjustment, provided a survey of rates has been conducted by the Police Department.

A survey was conducted in May 2005. The current tow rates in regards to basic service, storage, road service and after-hours release are below the county averages. The most recent rate adjustment occurred approximately two years ago on April 16, 2003. The requested increase would offset the increased operational costs associated to fuel, insurance, labor, etc.

Rotation Tow Fees	Current	Proposed
Basic Rate	\$120.00	<b>\$125.00</b>
Labor Rate	\$30.00 per ¼ hour	<b>\$31.25 per ¼ hour</b>
Storage	\$35.00 per day	<b>\$40.00 per day</b>
Road Service	\$50.00	<b>\$62.50</b>
After Hours Release	None	<b>\$62.50</b>

**Recommendation:** Motion to approve the increase in tow rate changes.

\* 16. **Adopt a Resolution Granting Final Acceptance: Manor Pump Station Improvements, Project Nos.: 3385 & 3396 (Staff Contact: Mehdi Khaila, 586-3328)**

**Background:** This project provided a new diesel generator, automatic transfer switch and pump controls and was initially accepted by City Council on March 16, 2004. The one-year project warranty period has passed after repairs were made twice to the concrete surface of the generator slab to correct the drainage. Staff conducted a final project inspection and has determined the work to be satisfactory. Therefore, staff recommends Council to grant final acceptance and the contractor's bond may be released.

**Recommendation:** Adopt resolution granting final acceptance and release of the Contractors bond.

\* 17. **Adopt a Resolution Amending Pre-Tax Payroll Deduction Plan For Service Credit Purchase Under Internal Revenue Code 414(h)(2) (Contribution Code 14) (Staff Contact: Dante D. Ong, 586-3132)**

**Background:** The Board of Administration of the California Public Employees' Retirement System (CalPERS), at its April 1996 meeting, approved a pre-tax payroll deduction plan for service credit purchases (i.e., Redeposit, Service Prior to Membership, etc.) under Internal Revenue Code (IRC) Section 414(h)(2) (Contribution Code 14).

By participating in this "pick-up" program, the City of Milpitas may provide its employees who are members of CalPERS, the benefit of deferring income tax liability on member service credit purchases. The deductions are considered member contributions and therefore pre-tax. Distributions are subject to income taxes when received by the member as either retirement benefit or refund.

In December 1996, the City of Milpitas adopted a resolution implementing pre-tax payroll deduction plan for service credit purchase under Internal Revenue Code 414 (h)(2) (Contribution Code 14) that applies to all City of Milpitas employees in the coverage groups specified in the resolution, as follows:

- Unrepresented, Confidential, Management, and Department Head Employees
- The Mayor and Other Members of the City Council
- Milpitas Police Officers Association
- Milpitas Professional and Technical Group
- International Association of Firefighters, Local 1699
- Milpitas Employees Association

Due to recent changes in the above coverage groups by the addition of Mid-management and Confidential Unit, CalPERS requested a resolution to amend the plan that will accommodate both current and future changes. Instead of specifying the coverage groups by employee group name, the resolution will apply to all City employees in two coverage groups:

- All Miscellaneous and All Safety Coverage Groups

**Recommendation:** Adopt the resolution amending the pre-tax payroll deduction plan for service credit purchases under Internal Revenue Code (IRC) Section 414(h)(2) (Contribution Code 14) for City of Milpitas employees who are members of the coverage groups specified in the resolution.

## **XX. BIDS AND CONTRACTS**

- \* 18. **Approve Plans And Specifications And Authorize The Advertisement For Bid Proposals: Sports Center Underwater Pool Lighting & Resurfacing Of Swimming Pools, Project No. 8163 (Staff Contact: Greg. Armendariz, 586-3317)**

**Background:** Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project provides underwater pool lighting replacement at the Sports Center pool, in compliance with the California Health Code, Section 3114B. Illumination of underwater areas provides direct vision and enables surveillance of swimming activities. This project will provide upgraded electrical panels, transformers and light fixtures in compliance with State health code.

Due to heavy pool use, the pool plaster surfaces are spalling and rapidly deteriorating at several locations. The sharp edges at these spalled areas are a health and safety concern, and increase the effort needed to clean the pools. The resurfacing of the swimming pools, which is programmed in the five-year CIP for funding in fiscal year 2007-08 is recommended to be accelerated and included in this work.

The Engineer's estimate for the swimming pool resurfacing and underwater pool lighting work is approximately \$168,000. A budget appropriation will be required to award this project for construction. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

**Recommendation:**

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

- \* 19. **Approve Consultant Services Agreement For Workers' Compensation Third Party Administrator Services (Staff Contact: Carmen Valdez, 586-3086)**



**Background:** The City became self-insured for Workers' Compensation Coverage in 1977. Since that time, the City has contracted with three (3) independent Workers' Compensation Administrators who handled processing of routine claims, paid medical bills, issued temporary disability payments and vouchers to employees, investigated and assisted in litigating disputed claims, and made recommendations for settlements.

As part of our efforts to continually explore ways to save the City money, staff initiated a Request for Proposal (RFP) to allow other Third Party Administrators (TPA) the opportunity to bid for the City's business. The decision to change our Workers' Compensation TPA was based upon the following factors: 1) the City is in the third and final year of its contract with Gregory B. Bragg & Associates (the City's current TPA), 2) a recent survey of City employees indicated that they were only "satisfied" with our current TPA, 3) Staff was interested in looking at competitive fee schedules from other TPAs, and 4) Staff has not been impressed with the overall handling of Worker's Compensation Claims by the current TPA.

There were thirteen (13) companies that responded to the City's RFP. After receiving the thirteen responses HR staff conducted a preliminary screening of the responses in an effort to eliminate any respondents that did not meet the minimum requirements that were stated in the RFP. At the conclusion of the initial screening, staff members from the Finance, Fire, Information Services and Police Departments were asked to review, evaluate and rate each qualifying RFP based upon specific criteria that included factors such as cost, procedural processes, company history, client base, etc. The outcome of the internal evaluation resulted in the establishment of the two top finalists. The two top finalists were then invited to give a thirty minute presentation followed by a 30-45 minute question and answer period before an evaluation panel that consisted of the City's Finance Director, Accounting Services Manager, HR Technician, Acting Police Chief, Fire Marshall and the Acting HR Director. Following the presentations and interviews, an analysis and comparison was conducted on the proposed fee schedules and reference checks were conducted.

As a result of this very comprehensive and thorough process, staff recommends that Southern California Risk Management Association (SCRMA) be awarded a contract to provide Third Party Administrator services for the City in accordance with the terms and conditions stated in the RFP. Staff unanimously agreed that SCRMA is the most responsive bidder who can best meet the needs of the City and provide quality services to our employees.

Staff proposes that a contract be developed that will provide TPA services beginning on November 1, 2005 and concluding on June 30, 2008. The terms of the contract will also include administrative fees in the amount of \$ 109,000 for the first year, \$117,000 for the second year and \$126,000 for the third year of the agreement. In addition, there will be a one-time fee for data conversion (from Gregory B. Bragg & Associates to SCRMA). The net result should be that the City realizes a cost savings by changing from its current TPA to SCRMA.

**Recommendation:** Authorize the Interim City Manager to execute a contract with Southern California Risk Management Association effective November 1, 2005 through June 30, 2008 in accordance with the terms and conditions stated in the RFP.

**\* 20. Approve a Contract With Skyhawks Sports Programs for Summer 2005 Sports Camps (Staff Contact: Dale Flunoy, 586-3228)**

**Background:** For the past six years Recreation Services has utilized the Skyhawks Sports Programs for Kids as its vendor providing summer youth sports camps. Skyhawks Sports Programs for Kids will provide certified personnel, instruction, and supplies for the City's Summer 2005 youth sports camps. The summer sports camps include basketball, flag football, volleyball, soccer, and golf. Mini-Hawks, a pre-school age camp (4-7 years old), which serves as an introduction to sports, is also included.



(Funds are available from Recreation Services operating budget for this purpose.)

**Recommendation:** Authorize the City Manager to execute a contract with Skyhawks Sports Programs for Kids for Summer 2005 Sports Camps for the not to exceed amount of \$24,000.00, subject to approval as to form by the City of Attorney.

**\* 21. Reject Bids and Authorize the Re-advertisement For Bid Proposals: Storm Water Pump Station Improvements, Project No. 8106 (Staff Contact: Doug De Vries, 586-3313)**

**Background:** On July 5, 2005, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals. This project will provide improvement at Penitencia and Bellew storm water pump stations including new roofing, skylights, flashings, and minor repairs to the roof structure. The Engineer's estimate was \$45,000.

Sealed bids were opened on Friday July 29, 2005. The bid proposals ranged from \$90,157 to \$100,525, and the apparent low bidder was Reinhardt Roofing with a bid of \$90,157.

As part of the bid analysis, staff contacted the bidders and non-bidders and learned that these contractors are currently very busy. This bidding environment contributed to the significantly higher bids. Therefore staff recommends the rejection of all bids, and requests the authorization to re-advertise the project for bid proposals. The re-advertising will be scheduled for later in the fiscal year when bid competition is more prevalent. The construction will be performed next spring, without any detrimental impact to these pump stations over this coming winter.

**Recommendation:**

1. Reject all bids.
2. Approve the re-advertisement of the project for bid proposals.

**\* 22. Authorize The City Manager To Execute Agreement: Kennedy/Jenks Consultants, Venus Way Sewer Pump Station Improvements, Project No. 6101 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This project is included in the approved five-year Capital Improvement Program. This project will provide for the design and construction of improvements to rehabilitate the Venus Way Sewer Pump Station. The existing pump station was constructed over 30 years ago and requires pump replacement, sandblasting and recoating of the wet well, miscellaneous valves and electrical component replacement, vault lid replacement, level controls upgrade, and installation of an electrical transfer switch.

Staff has interviewed several professional consultants in conformance with the City's consultant selection process, and recommends that Kennedy/Jenks Consulting Engineers provide the consultant services required to design the improvements for this project. Kennedy/Jenks Consulting Engineers performed the design for the previous rehabilitation. Staff has negotiated a scope and fee not to exceed \$28,400, which is considered reasonable for the work.

Sufficient funds are available in the project budget for the design phase.

**Recommendation:** Authorize the City Manager to execute an agreement with Kennedy/Jenks Consulting Engineers, for an amount not to exceed \$28,400 for the design of the Venus Way Sewer Pump Station Improvements, subject to approval as to form by the City Attorney.

**\* 23. Approve Agreement for Purchase of Real Property; Property Owner, Korean First Baptist Church of San Jose; Montague Expressway Widening, Project No. 4179 (Staff Contact: Greg Armendariz, 586-3317)**

**Background:** This project is included in the approved Capital Improvement Program (CIP), and provides for the widening of westbound Montague Expressway from 3 lanes to 4 lanes between I-680 and Piper Drive.

The project requires the acquisition of a 106 square foot parcel owned by Korean First Baptist Church of San Jose. The parcel is located at 1201 Montague Expressway. An appraisal and negotiated purchase agreement has been completed for the purchase of the property. The total negotiated price for the parcel including escrow closing costs and related fees is \$4,800. Sufficient funds are available in the project budget for this purchase.

**Recommendation:** Approve Agreement for Purchase of Real Property in the amount of \$4,800 from Korean First Baptist Church of San Jose.

**\* 24. Award the Bid for Hydraulic Trailer (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** Recreation Services is responsible for supporting various special events and programs, many of which take place out doors and require portable staging, fencing, tables and chairs, props and/or decorations that have to be transported from storage to the location at various City facilities and parks. During the FY05-06 budget hearing, Council approved the purchase of a hydraulic trailer. Staff issued a Request for Quotation for one Jacobsen Selma Hydraulic Trailer to four distributors and the manufacturer. Two (2) vendors responded. The following is a recap of the bids received including tax and freight.

<u>Bidder</u>	<u>Amount</u>
Action Trailer	\$7,307.37
Jacobsen	\$7,537.70

There are sufficient funds in the Recreation Services operating budget for this purchase.

**Recommendation:** Award the bid for the purchase of one (1) Jacobsen Selma Hydraulic Trailer to Action Trailer, in the amount of \$7,307.37.

**\* 25. Award the Bid for Sidewalk Repair, Curbs & Gutters, Project No. 4067 (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** The current contractor for sidewalk repair, curbs and gutter work for the City is no longer doing this type of work. Therefore, staff issued two separate Invitations for Bid to twenty-seven (27) suppliers on Purchasing's vendor list. The bid was priced on a dollar per square foot basis and based on eight (8) Standard Engineering drawings for sidewalks, curbs and gutters. One (1) vendor responded. The following is a recap based on the total average cost per square foot for all eight (8) drawings.

<u>Bidder</u>	<u>Normal Time</u>	<u>Premium Time</u>
JJR Construction, Inc.	\$22.37	\$35.00

The contract is for a (3) year period with two (2) additional one (1) year options subject to past performance and the Contractor's industry price changes for the past year. There are sufficient funds in Public Works CIP project number 4067 for this purchase.

**Recommendation:** Award the bid for sidewalk repair, curbs and gutters to JJR Construction, Inc. for the not to exceed amount of \$185,000.00 annually and authorize the City Manager to execute the contract, subject to approval as to form by the City Attorney.

- \* 26. **Award the Bid for Police Emergency Equipment Installation (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** Police vehicles require significant amounts of specialized electronics. The installation is also specialized and labor intensive work. Therefore, staff issued a Request for Quotation to twenty-one (21) suppliers on Purchasing's vendor list, five (5) responded. The following is a recap of the bids received per vehicle.

<u>Bidder</u>	<u>Tear Down</u>	<u>Build Up</u>	<u>Total</u>
Prison Industry Authority	No Bid	No Bid	
Lehr Auto Electric	No Bid	No Bid	
Day Wireless Systems	\$1,470.00	\$2,730.00	\$4,200.00
TelePath Corporation	\$1,000.00	\$3,000.00	\$4,000.00
Emergency Vehicle Solutions	<u>\$350.00</u>	<u>\$1,900.00</u>	<u>\$2,250.00</u>

The contract is for a (3) year period with two (2) additional one (1) year options subject to past performance and the Contractor's industry price changes for the past year. There are sufficient funds in Public Works Fleet Maintenance operating budget for this purchase.

**Recommendation:** Award the bid for Police Emergency Equipment Installation to Emergency Vehicle Solutions in the amount of \$2,250.00 per vehicle (not to exceed \$25,000) annually and authorize the City Manager to execute the contract, subject to approval as to form by the City Attorney

- \* 27. **Award the Bid for Security Cameras and Digital Video Recording Equipment at the New Corporation Yard, Project 6079 (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** The new Corporation Yard at 1425 McCarthy Blvd. requires 24-hour security surveillance to protect the main pump station and the three (3) new Public Works storage containers located there. Staff issued a Request for Quotation to eight (8) vendors on Purchasing's vendor list, all eight (8) responded. The following is a recap of the bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
ICS Integrated Communications	\$18,423.00
VIOCEN, Inc.	\$14,456.35
AEC Alarms	\$17,888.00
Omnitronics, Inc.	\$21,608.30
West Corporation	\$17,545.20
Delta Wireless	\$16,939.67
Monterey Information Technology	\$15,198.37
Network Design Communications	<u>\$13,720.94</u>

(There are sufficient funds in CIP Project No. 6079 for this purchase.)

**Recommendation:** Award the bid to, and authorize the City Manager to execute a contract with Network Design Communications for the purchase and installation of security cameras for the new corporation yard in the not to exceed amount of \$13,720.94, subject to approval as to form by the City Attorney.

## XXI. CLAIMS AND DEMANDS

- \* 28. **Approve Payment of the CAL-ID Invoice to the City of San Jose in the Amount of \$55,748 (Staff Contact: David Rossetto, 586-2405)**

**Background:**

CAL-ID is an automated fingerprint storage and retrieval system that enhances investigative procedures for law enforcement agencies in Santa Clara County. In 1989, the City Council adopted a resolution for the City of Milpitas to enter into an annual agreement with the County and other local cities to participate in the CAL-ID system. The City Council at its November 6, 2000 meeting adopted Resolution 7038 which allows the CAL-ID system to be operated from year to year without being subject to annual amendment, updates the prior agreement, and formalizes the existence and regulates the use of reserve funds.

Milpitas' share of the annual cost is \$55,748 for fiscal year 2005-2006. This amount represents a decrease of \$638 from FY 2004-2005. Funds for this have been included in the 2005-2006 Police Department budget.

**Recommendation:** Approve CAL-ID invoice to the City of San Jose in the amount of \$55,748.

**\* 29. Approve Payment to the Economic Driving School for Driver's Education Classes for FY 2005-2006 (Staff Contact: Rosana Cacao, 586-3207)**

**Background:** The City of Milpitas Recreation Services has contracted with Economic Driving School to provide Driver Education classes to the Milpitas community as a Contracted Instructor for the past ten years. Milpitas Recreation Services receives all registration forms and collects all fees for the classes, and Economic Driving School instructors teach all classes at the Community Center facility. During FY 2004-2005, over 200 people enrolled in the classes. Recreation Services will continue to contract with Economic Driving School to offer drivers education course to the Milpitas community. There will be a total of 7 classes offered with 40 people per class.

Funds were approved in the General Classes budget by the City Council during the 2005-2006 budget hearing. The contract is approved as to form by the City Attorney.

**Recommendation:** Approve contractual fees with Economic Driving School not to exceed \$19,600.00 for FY 2005-2006 for this year's driver's education classes.

**\* 30. Approve Payment to City of Fremont Tennis Center for Tennis Instruction FY 2005-2006 (Staff Contact: Rosana Cacao, 586-3207)**

**Background:** The City of Milpitas Recreation Services has contracted with the City of Fremont Tennis Center to provide tennis lessons to the Milpitas community as a Contracted Instructor for the past seven years. Both parties have entered into a Joint Powers Agreement, approved at the City Council meeting, April 20, 2004 and shall continue until completion of all services in accordance with the requirements set forth in Exhibit "A" of this agreement.

Milpitas Recreation Services accepts all registration forms and collects all fees for the classes and the City of Fremont Tennis Center instructors teach all the lessons on City of Milpitas tennis courts. During the FY 2004-2005, over 500 people enrolled in tennis lessons and camps.

Funds were approved in the General Classes budget by the City Council during the 2005-2006 budget hearing and there will be a total of 72 classes offered for 700 people. The contract is approved as to form by the City Attorney.

**Recommendation:** Approve contractual fees with the City of Fremont for tennis not to exceed \$20,000.00 to City of Fremont for FY 2005-2006.

**\* 31. Approve Payment Request to One Vendor (Staff Contact: Chris Schroeder, 586-3161)**

**Background:** In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following purchasing request over \$5,000.00 for approval:

1. \$6,296.00 to Simtel, Inc. for annual hardware and software maintenance on the EOC Teleminder notification system for the Fire Department. (Funds are available in the Fire Department operating budget for these services.)

**Recommendation:** Approve the payment request to Simtel.

## **XXII. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, SEPTEMBER 6, AT 7:00 P.M.**